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Chairperson: Mr. Penke ..... (Latvia)

Contents

Agenda item 69. Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

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The meeting was called to order at 10:05 a.m.

Agenda item 69: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/64/186, A/64/188, A/64/211 and Corr.1, A/64/213 and Corr.1, A/64/214 and A/64/304)

1. **Mr Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons), introducing his report (A/64/214), stressed that the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, recently adopted by the African Union, was the first such legally binding treaty covering an entire continent. He hoped that it would serve as a model for other regions, urged all African States to ratify it and implement its provisions and called on the international community to lend all the support needed for its implementation.

2. There was a link between climate change and internal displacement, but, while climate change was increasing the frequency and magnitude of climate-related disasters, the negative impact of those disasters could be mitigated by adopting disaster risk reduction measures. It was expected that the number of persons displaced by climate-related disasters would increase, and it was, therefore, crucial to enhance the capacities of Governments and humanitarian actors to provide protection and assistance to them. The implementation of the United Nations Framework Convention on Climate Change was essential in that regard.

3. With regard to internal displacement and peace processes, it was important to find durable solutions for internally displaced persons, which were not given sufficient importance in many peace agreements. He had, therefore, elaborated, in close cooperation with the Mediation Support Unit of the Department of Political Affairs and a group of experts, a guide on internal displacement and peace processes for mediators, providing advice on how to consult with internally displaced persons and engage them in the different phases of a peace process. He had also deepened his commitment with the Peacebuilding Commission through a country-based engagement on the Central African Republic and noted with satisfaction that the country-specific strategic framework reflected many of the recommendations that he had made.

4. In the many missions that he had carried out, he had seen that finding durable solutions for internally displaced persons through returns, local integration or resettlement in another part of the country was a long, complex and expensive process, requiring the coordination and cooperation of a variety of actors. Too often, the coordination between humanitarian and development actors was insufficient, the necessary funding for early recovery activities was lacking, and internally displaced persons were simply not a priority in recovery, reconstruction and development plans, which jeopardized the sustainability of returns or local integration. In many countries, including Uganda and Serbia, which he had recently visited, he had concluded that the practical problems in that area resulted from systemic failures in bringing humanitarian and development actors together at an early stage of recovery, failures due to a large extent to a lack of flexible funding mechanisms.

5. In Somalia, lack of humanitarian access, security risks for humanitarian workers, and the sharp decline in donor contributions exacerbated that long-standing crisis. Violent acts and serious violations of international humanitarian and human rights law were committed in an environment of impunity and had led to the displacement of 1.5 million persons, the majority of whom were women and children. Reception capacities must be strengthened to reduce the burden on host communities, further robust development interventions were needed as was investment in education and job opportunities for the youth, who often had no prospect other than recruitment by radical forces. The efforts by the authorities and humanitarian, development and human rights actors, however, were largely insufficient to bring urgently needed change.

6. In Sri Lanka, although the security situation had vastly improved, over 250,000 internally displaced persons were still held in closed camps. Restoration of their freedom of movement had become an urgent matter which Sri Lanka must resolve immediately to comply with its international commitments. In that regard, he had discussed with the Government a strategy for decongesting the camps based on the return of internally displaced persons to their homes, their release to host families or their transfer to welfare centres, and had urged the Government to pursue those options in parallel, speeding up the screening

procedures and releasing those not deemed to pose a security threat. Since his visit, progress had been made in demining and reconstructing returnee areas and releasing and returning a good number of displaced persons, but the ultimate goal was to restore freedom of movement and find durable solutions for all of them.

7. The Guiding Principles on Internal Displacement were now firmly rooted as the relevant framework for the protection of internally displaced persons, legislation and policies had been developed at the national and regional level, and the cluster approach had led to an improved humanitarian response, progress which was badly needed since the effects of climate change would lead to new displacements. At the same time, it was worrying to see that armed conflict was often conducted with utter disregard for the civilian population and that humanitarian space was shrinking in many countries. He, therefore, trusted that his successor would benefit from the particular strengths that characterized his mandate, continuing the work undertaken with Governments and other important stakeholders.

8. **Ms. Schlyter** (Sweden), speaking on behalf of the European Union, asked the Representative of the Secretary-General to provide further information on the work that he was carrying out within the Inter-Agency Standing Committee in terms of the links between the effects of climate change and internal displacement and with regard to discussions with the other humanitarian actors concerned and those who participated in the disaster risk reduction programmes. She also wished to know his view on current institutional arrangements concerning the management of the working group on providing protection in natural disaster situations and enquired how the Representative of the Secretary-General made sure that the Guiding Principles on Internal Displacement were widely applied in his communications with Governments and in his work with regional organizations.

9. Welcoming the efforts made to take generally into account the rights of displaced persons in the activities of the United Nations system, she also wished to know more about the work conducted by the Representative of the Secretary-General with the agencies and programmes with which he had signed memorandums of understanding. Lastly, she requested further information and examples of good practice regarding the conceptual framework for lasting solutions for displaced persons.

10. **Mr. Vigny** (Switzerland) said that he agreed that the fact that a growing number of States had decided to deal with the problem of internal displacement by establishing legislative frameworks and specific policies was a positive development, particularly with regard to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. In that regard, he wished to know the views of the Representative of the Secretary-General on the main difficulties linked to the effective implementation of those normative instruments and asked what measures should be taken to ensure that displaced persons really benefited from them. The return of displaced persons was a major problem in several countries affected by armed conflict. Referring to the very complicated case of Sri Lanka, he asked about the steps that the national authorities and other actors concerned should take to ensure that the basic rights of the displaced, particularly their right to freedom of movement and residence, were respected, and about action to be taken in order to create favourable conditions for the voluntary return of those persons in safety and dignity or their voluntary resettlement in another part of the country.

11. **Mr. Porquet** (Côte d'Ivoire) thanked the Representative of the Secretary-General for having supported the adoption of the Ouagadougou peace accords and asked how he envisaged helping States, on the one hand, to carry out their duty to protect displaced populations from terrorism and the presence of armed bands and, on the other hand, to respect their obligations in the field of human rights.

12. **Mr. Tagle** (Chile) thanked the Representative of the Secretary-General for the details he had provided regarding his relationship with regional organizations, which were very important to Chile, as well as with the Peacebuilding Commission. The Commission's contact with other United Nations authorities and entities played a critical role. He requested further information on the effects of the food and financial crises on internally displaced persons and on countries emerging from conflict.

13. **Mr. Michelsen** (Norway) asked how he planned to follow up on the recently adopted African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa in terms of communicating with Governments in the region.

14. **Mr. Mercado** (United States of America), referring to the challenge of determining the number of persons displaced following natural disasters and the importance of ensuring their protection, asked how the international community could improve protection measures and what steps were called for to better monitor large displacements resulting from natural disasters.

15. In view of the numerous instances of prolonged displacements observed in some regions of the world, sometimes lasting for decades, he wondered at what point a situation of displacement could be considered over, and what criteria should be used to determine when the return of persons displaced in the long term was considered hopeless and they should no longer be regarded as displaced.

16. **Ms. Hezir** (United Kingdom), referring to arbitrary displacement, asked how accountability measures could improve the human rights situation of internally displaced persons and whether in some cases failure to investigate violations of international law and human rights law reliably contributed to make the intractability of displacement. She welcomed his analysis of the camps for the internally displaced in Sri Lanka and asked whether, in addition to the vital actions being pursued to assist those recently displaced, there were plans to help those facing long-term displacement. She also wondered what further initiatives the United Nations should undertake in Sri Lanka. Lastly, noting that Pakistan was among the countries with the highest number of newly displaced people in 2009 and that Pakistani civilians continued to flee combat zones, she asked for an assessment of the situation in the country and if he planned to conduct a visit there before his mandate came to an end.

17. **Mr. Sparber** (Liechtenstein) said that his delegation agreed that internal displacement was and would continue to be one of the greatest international humanitarian and human rights challenges, especially considering the fact that climate change was an aggravating factor. He welcomed the Representative's collaboration with the other major relevant actors in the United Nations system, which was a major factor in the mainstreaming of the human rights of internally displaced persons. He asked what supplementary measures could be taken so that internally displaced persons would receive greater attention in the future.

18. **Mr. Ebner** (Austria) requested details on work with United Nations agencies to promote the human rights of displaced persons. Regarding the problem of the disregard by non-State actors for international obligations to protect civilians — one of the major obstacles to protection of internally displaced persons — he asked what measures could ensure respect for those obligations. Human rights must be more fully realized in situations of internal displacement by implementing measures on the ground, and he wondered if there were any models or manuals that could help to shape the types of laws and policies recommended in the report. The integration of displaced persons into society was a critical component of a lasting solution; he asked how assistance programmes should be developed and implemented to ensure successful integration and what role transitional justice mechanisms played in the process.

19. **Mr. Cardoso** (Brazil) said that Brazil had yet to be convinced of a direct nexus between the effects of climate change and internal displacement and recalled that the Intergovernmental Panel on Climate Change had concluded in its Fourth Assessment Report that "disaggregating the causes of migration [was] highly problematic" and that "estimates of the numbers of people who [might] become environmental migrants [were], at best, guesswork". In addition, it was not clear what was meant by the reference to the obligations of Member States in the context of climate change and in accordance with the Guiding Principles on Internal Displacement, as there was no reference to climate change in the Guiding Principles. His delegation would appreciate hearing his views on those issues.

20. **Ms. Ivanović** (Serbia), referring to the visit by the Representative of the Secretary-General to Serbia in June and July to evaluate the situation of internally displaced persons from the southern Serbian province of Kosovo and Metohija, emphasized that more than 200,000 people had been displaced for over ten years. Only a few thousand of them had returned home and the sustainability of their return was uncertain, for reasons which had been identified in the report. Her delegation requested further elaboration on how the Guiding Principles on Internal Displacement could be better observed and implemented by all the relevant actors on the ground, particularly in protracted displacement situations. In reference to the Guiding Principle on deprivation of property and possessions of

internally displaced persons, it would be helpful to know the extent to which obstacles related to repossession and reconstruction of property affected the basic right of internally displaced persons to decide freely on their voluntary return.

21. **Mr. Kohona** (Sri Lanka) said that since the Representative's most recent visit to his country, the number of people in the displaced persons camps had gone down, a trend that would continue. The camps were relatively new, and the Government remained committed to returning the people displaced by the conflict, who had been used as human shields and taken hostage by the Liberation Tigers of Tamil Eelam, to their homes as soon as possible. Sri Lanka remained cautious and was aware that there were large numbers of combatants still in the camps. Finding accommodation for internally displaced persons, demining of their towns and villages of origin and restoration of common services to those areas remained a huge challenge. Understanding and assistance from friendly countries would be appreciated in that respect.

22. **Mr. Monzon** (Canada) said that his country appreciated the Representative's efforts and shared his concern regarding the challenge of protecting internally displaced persons. Canada was particularly concerned about the deteriorating humanitarian situation in northern Yemen, the restrictions on freedom of movement of displaced persons in Sri Lanka and the threats to the safety of displaced persons in the Democratic Republic of the Congo, Sudan and Somalia. His delegation encouraged Pakistan to continue efforts to mitigate the effects of security operations and displacement of its civilian population. Canada had taken careful note of the Representative's consideration of the potential impacts of climate change on displacement and his elaboration of the role of the Guiding Principles in that respect. Further details would be appreciated on the response of Member States, and in particular those most vulnerable to climate change, regarding their plans to apply the Guiding Principles to cases of displacement where climate change might have played a role.

23. **Ms. Halabi** (Syrian Arab Republic) said that there was a danger in imposing long-term solutions and forcible resettlement on displaced persons, and the authorities responsible for their return should be aware of their rights. With regard to the responsibility of the State to provide assistance to displaced persons under foreign authority or occupation, it did sometimes happen that the occupying Power encouraged the displacement of civilians. In such circumstances, she wondered how it was possible to ensure assistance and protection without flouting the responsibilities stemming from international humanitarian law and what the responsibility of the international community was in that regard.

24. **Ms. Kidanu** (Ethiopia) said that it was expected that the implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), recently adopted by the African Union, would help to resolve the situation of displaced persons. Given that it would take some time for countries to ratify the Convention, the views of the Representative of the Secretary-General on measures which could be taken to facilitate its entry into force would be appreciated.

25. **Mr. Hassan** (Sudan) said that Africa had suffered greatly in connection with the issue of internally displaced persons, and it continued to do so. One of its causes was colonialism, which had resulted in artificial borders between countries and divided families and tribes. Over the last 20 years, climate change had had severe consequences for Sudan, particularly in the western part of the country, where it had led to two internal conflicts. Information would be appreciated on assistance the United Nations could provide to strengthen national policy to address the consequences of climate change and the problems resulting from internal displacement.

26. **Mr. Füllemann** (International Committee of the Red Cross (ICRC)) said that 2009 marked the sixtieth anniversary of the Geneva Conventions, the core treaties of international humanitarian law. International humanitarian law provided a strong international legal framework, relevant not only for preventing displacement in armed conflict, but also for addressing the responsibilities of parties to respect their obligations. The Guiding Principles on Internal Displacement incorporated well-established rules of international humanitarian law. The International Committee of the Red Cross and the Representative of the Secretary-General had distinct mandates, but they were complementary. There was a shared conviction that greater respect for core rules of international humanitarian law would greatly reduce the number of internally displaced persons. ICRC reaffirmed its commitment to work with Member States, the Representative of the Secretary-General and relevant

organizations to ensure better respect for international humanitarian law, to prevent displacements and protect and assist displaced persons in armed conflict and other situations of violence. Further information on observations on the ground of trends in respect for international humanitarian law by parties to conflicts would be appreciated.

27. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons) noted that it was not climate change per se but rather its effects which, when they rendered certain regions uninhabitable, resulted in displacement. In the context of his cooperation with the Inter-Agency Standing Committee, his work had involved identifying displacement situations related to climate change and determining normative gaps. In that regard, he believed that the Guiding Principles dealt appropriately with the issue of displacements caused by disasters, both sudden-onset and slow-onset. While the Guiding Principles did not in fact mention climate change, they did contain references to natural and man-made disasters resulting from it. It would be useful, particularly at the upcoming United Nations Climate Change Conference in Copenhagen, to recognize that flight and migration caused by a danger were disaster coping mechanisms, even as they created major new problems.

28. The Guiding Principles and the work being done by the African Union were very valuable for States, but in order to be fully effective, they must be legally binding and incorporated into States' domestic law. The progress achieved in recent years in that area was encouraging. He called on the relevant Governments to take the necessary measures so that the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa could enter into force. At the same time, attention must be drawn to the fact that implementation by States represented the main challenge, as it would involve the establishment of the appropriate legal and institutional frameworks, as well as capacity-building, the allocation of necessary resources and participation in the international community.

29. The Framework for Durable Solutions for Internally Displaced Persons was based on a comprehensive approach, whereas the solutions which had been explored previously had given priority to only a limited number of aspects. That was why they had failed. As to the special problem of protracted displacement, it was necessary to establish at what point a given situation was over. Internally displaced persons remained full citizens, and, as such, they had the right to choose freely to return to their homes, to settle where they were or to relocate elsewhere within the country. However, for a solution to be sustainable, the displaced persons must no longer have specific needs which would not exist if they had not been displaced, meaning that shattered lives must be rebuilt, property which had been seized must be restored to its rightful owners, or the owners must be compensated, and self-reliance should be promoted, inter alia. Protracted displacement often reflected a lack of political will or an inability on the part of the stakeholders to find sustainable solutions. Therefore, if return was not possible, displaced persons must still have the right to lead a normal life. Those two things were not mutually exclusive.

30. He had participated in a workshop there on the search for sustainable solutions to the protracted displacements in Sri Lanka, and once operations to return the recently displaced were complete, the national authorities would need to give attention to displaced persons in protracted situations.

31. In response to the representative of Pakistan, he noted that he must receive an official invitation from that country in order to make a visit.

32. If the property issues in Kosovo were not resolved, they would represent one of the main obstacles to a sustainable solution.

33. The proliferation of international humanitarian law violations had a direct impact on the human rights of internally displaced persons. To find sustainable solutions and protect displaced persons' rights, it was crucial to combat the climate of impunity which exacerbated the phenomenon of mass displacements.

34. **Mr. Bustamante** (Special Rapporteur on the human rights of migrants), introducing his report (A/64/213), said that it highlighted a number of key issues related to the protection of the human rights of migrants, such as the protection of children in the context of migration, some examples of good practices and the problems remaining to be solved in protecting the fundamental rights of migrants. Over the course of his mandate, he had proactively engaged with a variety of stakeholders through country visits and exchanges of communications with Governments on reported cases of human rights violations. He had addressed the

plight of migrant domestic workers, especially women, and the increased vulnerability of migrants in the wake of the financial crisis.

35. Recalling the obligation of States to ensure the protection of all children at all stages of the migration process, who could be divided into three categories (children left behind by migrating family members, children moving across borders and migrant children in host countries), he stressed the special vulnerability of the girl child to gender-based violence and discrimination. Transit and destination countries, in particular, should ensure protection for unaccompanied and undocumented children and child victims of transnational organized crime, including trafficked children and those forced into child pornography and prostitution. Given that such protection required setting up an adequate legal framework, all Member States should ratify the relevant international human rights instruments and incorporate them into their domestic law.

36. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represented the international instrument that offered the most comprehensive framework for the protection of the human rights of migrants. He commended those States that had established minimum standards of protection for the civil, political, economic, social and cultural rights of all migrant workers and their families. In that regard, it was important to fill the existing protection gaps, such as the lack of specific provisions on children in migration law and the failure to take into account the specific conditions and needs of migrant children in public policies aimed at children in general. Those gaps could be addressed, on the one hand, by harmonizing migration law with the Convention on the Rights of the Child and other relevant international and regional human rights instruments and, on the other hand, by bringing national laws into line with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

37. Highlighting a number of good practices related to enhancing cooperation between countries of origin and diaspora communities and to raising awareness of human rights among prospective migrants, he said that countries of origin and destination should share responsibility for shaping and implementing a human rights-based approach to migration governance and that the role of national human rights institutions in the protection of migrants' human rights should be strengthened. He specially welcomed the initiatives taken in the Asia and Pacific region and the adoption of a number of guidelines and strategies aimed at ensuring the protection of migrants' rights in multicultural societies. He also drew attention to good practices oriented to enhancing the enjoyment of human rights by migrants, including by providing health coverage and care services regardless of the immigration status of those concerned. In times of economic crisis, it was commendable that some States had taken the initiative to prohibit the denial of health-care services based on a person's irregular status and to include migrant children in early childhood services, and that host countries were making an effort to improve equality of access to education for migrant children.

38. Despite the progress made, much remained to be done to ensure the protection of human rights in the context of migration. The year 2009 had been particularly alarming because of the economic crisis, the outbreaks of hostility, intolerance, discrimination and xenophobia against migrants in countries of transit and destination and the increase in cases of indefinite detention or collective deportation of migrants. There was a need to work harder to transform those emerging trends by taking effective action to uphold the human rights of the millions of people who lived outside their country of origin, and also by taking a strong stand against the criminalization of irregular migration.

39. **Mr. Mamdouhi** (Islamic Republic of Iran) asked for details of initiatives taken or planned to promote good practice with a view to obtaining a stronger commitment to help migrant communities. In the light of the economic and financial crisis, he wondered what measures should be taken by host countries to prevent violations of migrants' human rights. He would like to hear some recommendations on the follow-up to the Durban Review Conference outcome document and asked for details of the approach to combating racism, racial discrimination, xenophobia and related intolerance. He also enquired about the main problems facing the Special Rapporteur and about his cooperation with other special rapporteurs.

40. **Ms. Leveaux** (Sweden), speaking on behalf of the European Union, said that the European Union was one of the regions that hosted the largest number of migrants. The question of migration should be approached from a global perspective, bearing in mind

the shared responsibilities of the members of the international community and giving priority to the best interests of the child. In view of the very different experiences that children had of migration, depending on their particular circumstances, she asked if there were some general principles that could be uniformly applied, or whether a case-by-case approach should be taken. With regard to the efforts by member States of the European Union to promote cross-cultural education and integrate migrants and their families, she asked what role regional organizations could play in strengthening the protection of children.

41. **Mr. De León Huerta** (Mexico) agreed that a comprehensive approach was needed to the phenomenon of migration and pointed out that the United Nations High Commissioner for Human Rights had recently defined the defence of human rights in the context of migration as a priority. He asked how such an approach could be integrated into the work of the United Nations while taking into account the best interests of the child.

42. **Mr. Pérez** (Peru) said that his Government attached great importance to the issue of migration and asked for details of the concept of shared responsibility, which was mentioned in certain forums but was not consistently referred to by name in General Assembly documents.

43. **Ms. Taracena Secaira** (Guatemala) said that the Special Rapporteur had seen, during his visit to Guatemala, the efforts made by her Government to improve communications with migrants and help them. As migrants should never be considered as criminals, she wondered how they could receive "preferential" treatment if they were in an irregular situation. She expressed concern about attacks on them and about the murder of migrants in destination countries.

44. **Mr. Bustamante** (Special Rapporteur on the human rights of migrants), replying to the question from the representative of the Islamic Republic of Iran, said that examples of good practice abounded, and stressed the importance of establishing equality between children in an irregular situation and children with resident status.

45. With regard to the crisis, he drew attention to the pattern of non-return of migrants, as observed by the International Labour Organization: migrants were resorting to every means to stay in the host country even when they were affected by unemployment, which reduced their value on the labour market and left them even more exposed to exploitation. The divide between the main host countries, which had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and countries of origin was not an "act of nature" but an "act of power" which was a matter of concern to him.

46. The criminalization of migrants in European legislation, to which the representative of Sweden had drawn attention, was one of the most worrying developments. The issue of child labour, raised by the representative of Mexico, also needed to be addressed, as child labour was widespread in Latin America, especially in Mexico, and was a violation not only of domestic law but also of international law.

47. With regard to the responsibilities of countries of origin and host countries — including in the area of illegal immigration — he stressed that international migration had bilateral causes and consequences, especially given the local demand for labour that was aimed at undocumented migrants. That point, however, was often lost in the debate on the costs and advantages of immigration and was an obstacle to the adoption of an approach based on human rights and the recommendations of the United Nations.

48. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), introducing his report (A/64/211), said that after the wave of counter-terrorism measures undertaken in response to the events of 11 September 2001, which had all too often led to human rights violations, many Governments were moving away from practices such as torture, extraordinary rendition and secret detention, in the belief that meeting their legal and moral obligations was also an effective way to help fight terrorism. However, it was necessary to remain vigilant, as there was much work still to be done in that area.

49. During his visit to Egypt, he had held talks with the authorities and representatives of civil society on the Government's commitment to replace the state of emergency with a proper counter-terrorism law. He had appreciated the frankness shown by the administrative, judicial and legislative authorities and looked forward to the continued cooperation of the Egyptian Government. He hoped to make another trip there soon

to visit places of detention and attend trials before finalizing his report and submitting it for consideration to the Human Rights Council. He expected to visit Tunisia in 2010, before going to Peru and Chile. He also hoped to visit Algeria, Malaysia, Pakistan, the Philippines and Thailand. He thanked Iceland for its invitation and said he hoped to engage soon in consultations with the Russian Federation.

50. In December 2007, the Human Rights Council had requested the Special Rapporteur to integrate a gender perspective throughout the work of his or her mandate (resolution 6/28). He had done so in the reports on his missions to Israel and the United States, as well as in his thematic reports. However, he had considered it pertinent to provide a more comprehensive assessment in his report to the General Assembly. He realized he had gone further than expected by not focusing merely on the rights of women, but he had wanted to consider the fate of sexual minorities and torture methods that utilized sexuality in the fight against terrorism. He highlighted the recommendations contained in paragraphs 53 (d), (g), (l), (p) and (q) of his report and the four recommendations to United Nations bodies contained in paragraph 54.

51. The procedure for compiling the consolidated list of the Al-Qaida and Taliban Sanctions Committee established pursuant to Security Council resolution 1267 (1999) had been improved but the main problems had not been resolved: his stay in New York would be an opportunity to pursue that matter further. The 15 States that made up the Committee justified their proposals for inclusion on the consolidated list with vague references to the intelligence available to them; the Committee's decisions were not subject to any independent judicial review; and delisting required consensus. The procedure was not therefore the "clear and fair procedure" to be expected of an intergovernmental organization. However, the outcome of the *Sayadi and Vinck* case indicated that the Human Rights Committee could conduct an indirect quasi-judicial review of the consequences of inclusion on the consolidated list where the State concerned had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and had played a substantial role in the listing procedure.

52. In conclusion, he welcomed the adoption of General Assembly resolution 63/185, which he saw as an appeal to States not to apply the relevant sanctions blindly but to subject them to human rights guarantees.

53. **Ms. Kafanabo** (United Republic of Tanzania), speaking on behalf of the Group of African States, said she regretted that the Special Rapporteur had attempted to introduce controversial notions into his report, such as sexual orientation and gender identity, thereby departing from the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council and from the mandate the Council had granted him. The African States were alarmed at the report's marginalization of urgent issues, in that it redefined gender, equated the status of women to that of homosexuals and, above all, tended to introduce interpretations of international instruments, which could only harm the credibility of the whole special-procedure system.

54. The African States also regretted that the Special Rapporteur had not based himself on reliable data or established facts, had not sufficiently taken into account the information provided by the States concerned and had not first sent his report to the Human Rights Council, even though some of his recommendations were addressed to the Council and to other special procedures mandate holders. He had therefore violated a number of provisions of articles 6, 8 and 13 of the Code of Conduct and had exceeded his mandate.

55. The special procedures were the cornerstone of the constructive approach undertaken by the Human Rights Council, and the African States were always willing to respond promptly to mandate holders' requests; they had urged all States to consider responding favourably to requests for visits, given that ensuring the effectiveness of special procedures was a shared obligation. By referring to the Yogyakarta Principles in his report, the Special Rapporteur had violated article 12 of the Code of Conduct, according to which mandate holders must show restraint in expressing their personal opinions, and he had also failed to fulfil his obligations under articles 3 and 7 of the same Code. He had deeply disappointed the African States by breaching the trust conferred upon him, and they would therefore not engage in the discussion on his report.

56. **Ms. Flood-Beaubrun** (Saint Lucia) said that her delegation opposed the Special Rapporteur's incorporation of his personal ideas concerning a gender

perspective into his report. Incorporating a gender perspective required analysing the reality of the social order in terms of the differences between men and women, and did not include sexual orientation or gender identity. Such had always been the understanding among Member States and the entire United Nations system, as evidenced by the Human Rights Council's annual discussion on the integration of a gender perspective.

57. The reference to the Yogyakarta Principles, which had not been recognized by the Member States, violated article 8 of the Code of Conduct. The Special Rapporteur had therefore exceeded his mandate by attempting to change the definition of a universally recognized term on the basis of premises that did not exist in international human rights law, at the expense of other relevant subjects within his mandate. The right of lesbian, gay, bisexual, transgender and intersex individuals not to be discriminated against was important. However, by equating their rights to those of women, the Special Rapporteur had departed from his mandate and deprived the Member States of important information concerning the harmful effects of counter-terrorism measures upon women. The mandate of the Special Rapporteur was extremely important to Saint Lucia, which was awaiting an objective report containing the guidance necessary to ensure the protection of men's and women's rights.

58. **Mr. Rastam** (Malaysia), speaking on behalf of the States members of the Organization of the Islamic Conference (OIC), said that the Human Rights Council, in extending the mandate of the Special Rapporteur, had asked him to continue his work on the vital question of respecting human rights while countering terrorism and to integrate a gender perspective in order to elucidate the effects of counter-terrorism measures on the rights of women. OIC was alarmed at the inclusion of issues and principles in the Special Rapporteur's report that did not enjoy universal recognition by the Member States, were not based on reliable information or verified facts, and did not take into account all of the facts, in violation of a number of the provisions of articles 3, 6, 8 and 12 of the Code of Conduct. While OIC recognized the principle of independence for special procedures, the report had created a difficult environment for the discharge of the mandate, at the expense of the core issues which the mandate had been intended to help address. OIC regretted the manner in which the Special Rapporteur had written his report, and invoked the obligations that the Code of Conduct imposed on mandate holders, particularly those stated in articles 3 and 7.

59. **Mr. Hassan** (Sudan), speaking on behalf of the Group of Arab States, said that the Group unanimously rejected terrorism and supported the Special Rapporteur's action within the framework of his mandate. It therefore regretted that he had departed from his mandate by attempting to introduce controversial notions and erroneous concepts. It refused to participate in such a debate, given that the Human Rights Council had asked the Special Rapporteur to examine the consequences of counter-terrorism measures for women, not to delve into considerations such as sexual orientation or gender identity.

60. The Group regretted that the Special Rapporteur had not verified the information in his report and had not discussed it with the States concerned, thereby violating articles 6, 8, 11 and 13 of the Code of Conduct. Promoting collaboration was a shared responsibility and the Special Rapporteur should have first sent his findings and recommendations to the States concerned and to the Human Rights Council. Since article 12 imposed specific obligations upon him, his reference to the Yogyakarta Principles was regrettable. The Group supported the Special Rapporteur in the activities of his mandate, but deplored the approach he had chosen and exhorted all mandate holders to respect the limitations of their mandates in order to preserve the trust placed in them.

61. **Mr. Mariano Baños** (United States of America) said that his delegation welcomed the Special Rapporteur's attention to the serious human rights abuses committed by Governments against women and the lesbian, gay, bisexual and transgender community under the guise of combating terrorism. His delegation was concerned, however, that those issues had been overlooked because of the provocative statements made in the report regarding the definition of gender. The ordinary, generally accepted meaning of the term "gender", as defined in 1995 by the President of the Fourth World Conference on Women, held in Beijing, continued to be the same for the United States; however it was not the latter's intention to challenge the independence of the Special Rapporteur or to reprimand him, but rather to express a respectful difference of opinion, as was fitting in such a dialogue.

62. Given that efforts undertaken to protect women's rights in the context of combating terrorism could be used to reinforce misinformed gender stereotypes and that certain counter-terrorism strategies could be harmful to women because of their role within the family, his delegation would like the Special Rapporteur to explain how Governments could create legitimate counter-terrorism strategies while avoiding the reinforcement of such stereotypes.

63. **Mr. Bené** (Holy See) said that the notion of gender was not a social construct but corresponded to biological sexual identity; that was the interpretation given in the Rome Statute and the Beijing Declaration and Platform for Action. The idea that it could be a social notion that evolved according to place and time did not serve the cause of counter-terrorism and created dissension between men and women by placing them in categories that could be modified at will. Society must defend the rights of each and every individual, regardless — not because — of their differences; dignity was a right to which everyone was entitled.

64. **Ms. Horsington** (Australia) said that her country had sought to adopt counter-terrorism laws that respected human rights obligations and forbade discrimination based on sex. She supported the Special Rapporteur's recommendation concerning enshrining the principles of gender-equality and non-discrimination in the design and implementation of all counter-terrorism measures and, noting the concern regarding the effects of targeted sanctions and control orders on the human rights of third parties, she was pleased to see that the Financial Action Task Force had prepared a document summarizing best practices on the matter.

65. With regard to the financing of non-governmental organizations, her delegation believed that the main thing was to establish control measures for the use of funds paid by donors and wondered what else could be done to increase the transparency of how resources available to local organizations, including women's associations, were managed.

66. Regarding travel documents, they were becoming increasingly secure and her Government had tried to satisfy the legitimate concerns of transgender persons — who risked being unduly penalized — by sometimes making exceptions. She wondered what the Special Rapporteur's views were regarding other measures to safeguard the rights of transgender persons in the context of counter-terrorism, particularly as regards immigration.

67. **Ms. Schlyter** (Sweden) noted with concern the Special Rapporteur's conclusions regarding those subject to gender-based abuse who were often caught between targeting by terrorist groups and the State's counter-terrorism measures. She requested further information regarding the links between counter-terrorism measures and the decrease in funding for organizations fighting to promote gender equality, which were also, to some degree, fighting terrorism by encouraging development.

68. Taking note of the Special Rapporteur's contribution to the Working Group on Protecting Human Rights while Countering Terrorism, she asked what he thought about the work being done by the Counter-Terrorism Implementation Task Force of which the Working Group was a part. The European Union had stressed that mandate holders must be free to carry out their duties as they saw fit and that States could express disagreement with the content of a report without, however, criticizing the author for the way in which he had decided to carry out his mandate; they could request clarification and ask questions of the Special Rapporteur during the debate. All forms of discrimination, including that based on sexual orientation or gender, limited human rights and fundamental freedoms, issues that clearly fell within the mandate of the Special Rapporteur. Quoting article 3 (a) of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, she recalled that mandate holders must be able to exercise their functions freely without any kind of extraneous influence.

69. **Ms. Melon** (Argentina) welcoming the Special Rapporteur's review of the issue of inclusion in the consolidated list, said that her country remained concerned by the Security Council's refusal to change the individual sanctions regime. The disappearance of men who were being held in the name of counter-terrorism had serious repercussions on the rest of the family. Her delegation was concerned that the very broad definition of terrorism authorized prosecuting, inter alia, human rights defenders and asked the Special Rapporteur for his opinion regarding the use of the war paradigm to counter terrorism.

70. **Ms. Barghouti** (Observer for Palestine) associated her delegation with the statement made by

the representative of the Sudan and expressed her appreciation to the Special Rapporteur for visiting the occupied Palestinian Territory and for the concern he had expressed regarding the tremendous suffering of the Palestinians because of the Israeli occupation. She asked what specific measures the international community, inter alia, the United Nations, planned to take to put an end to a situation that had existed for 42 years and, in particular, to end the human rights violations.

71. **Ms. Froberg** (Finland) asked for further information regarding the technical reference guides referred to in the report and asked what could be done to make sure that counter-terrorism laws were not used to suppress the economic, social and cultural rights of indigenous people. Recalling that women fighting to defend human rights were often targeted by terrorist groups, she asked the Special Rapporteur to explain what measures should be taken to ensure that they were not marginalized and to encourage them to participate in the preparation of counter-terrorism strategies that respected women's rights.

72. **Mr. Vigny** (Switzerland) made a general statement regarding the independence of Human Rights Council special procedures mandate holders and stressed that his Government considered that that mechanism was one of the most valuable and that the independence of the special rapporteurs, the cornerstone of the system, must be safeguarded. At the same time, the principle of self-regulation was crucial in order to guarantee the coherence and viability of the system, the rules guiding the work of the rapporteurs were those laid down in the Manual and the code of conduct for special procedures. The Human Rights Council had reaffirmed, in a presidential statement (A/HRC/PRST/8/2), its commitment to the independence of special procedures mandate holders and had outlined measures to be taken in the event of persistent non-compliance by a mandate holder with the provisions of Council resolution 5/2. His delegation believed that the current system, the Coordinating Committee of Special Procedures, had enough monitoring mechanisms to ensure the integrity and independence of the special rapporteurs and it could not accept that certain States should constantly be criticizing the special rapporteurs simply because they did not agree with the latter's findings. States did not have to agree on the content of the reports, but only on the resolutions that followed.

73. **Ms. Pi** (Uruguay) said that it was vital to fight all forms of discrimination, not only within the framework of counter-terrorism but in general. Her delegation would never have thought that the report could give rise to a discussion on the notion of "gender" and had hoped to discuss — while respecting the views of each delegation — the issue of discrimination against gays, lesbians and transgender persons. She deplored the fact that it had not been possible to do so.

74. **Ms. Major** (Canada) said that she believed that the Special Rapporteur had a special role to play to help States to bring a human rights aspect to the fight against terrorism. She wondered what measures could be taken to ensure the mainstreaming of gender in policies adopted by Member States to fight terrorism.

75. **Ms. Samson** (Netherlands) said that the risk of gay, lesbian and transgender people falling victim to counter-terrorism measures deserved the attention of the international community. The principle of non-discrimination was firmly anchored in international law and applied to all. That must be taken into account during the preparation of counter-terrorism measures. The Netherlands believed that Special Rapporteurs must remain independent when discharging their mandates, especially in the selection of their teams.

76. **Mr. Long** (United Kingdom of Great Britain and Northern Ireland), reaffirming the independence of mandate holders, said that it was important that the Third Committee should have access to the reports of experts who addressed real human rights problems. The questions raised by the Special Rapporteur fell within his mandate and it was important not to ignore them. The United Kingdom believed in the universality of human rights and would continue to defend women's rights as well as those of gay, bisexual and transgender people. It would also continue to oppose any attempt aimed at preventing the investigation of acts of discrimination, whatever their form.

77. **Mr. Glangovan** (India) said that the Special Rapporteur appeared to have redefined the issue of gender mainstreaming and as a result had diminished the issue of the effects of counter-terrorism measures on women, thus depriving the Third Committee of a useful discussion. He asked the Special Rapporteur to provide examples of situations that had led to the recommendations made in subparagraphs 53 (b), (c), (e), (j), (l), (m), (o), (p) and (q) of his report.

78. **Mr. De Léon Huerta** (Mexico) said that the Special Rapporteur had always received the support of Mexico while discharging his mandate. The independence of mandate holders was essential and must be supported by all Member States. He asked for an explanation of how technical cooperation in the field of human rights could be included in all counter-terrorism efforts.

79. **Mr. Tagle** (Chile) said that the report (A/64/211) embodied the freedom and independence Special Rapporteurs must demonstrate. Discrimination could target anyone, regardless of gender or sexual identity, and excluding anyone from the investigation of the subject matter amounted to creating second-class citizens. He asked what kind of cooperation could be undertaken with regional organizations to establish more uniform regional criteria in the field of counter-terrorism. The Special Rapporteur could be reassured that he would enjoy the full cooperation of the Government during his visit to Chile in 2010.

80. **Ms. Tvedt** (Norway) said that her delegation supported the Special Rapporteur's interpretation of gender. The principle of non-discrimination meant that human rights applied universally to all human beings, regardless of sex, religion, sexual orientation or sexual identity. There must be an independent system to monitor the respect for human rights and to establish facts.

81. **Ms. Pérez Álvarez** (Cuba) said that Cuba was a party to all counter-terrorism instruments and that it condemned all acts of terrorism. It also condemned torture and cruel, inhuman and degrading treatment and punishment during the "war on terror", whether in occupied territories, illegal naval bases or secret sites run by the CIA or other agencies. The Special Rapporteur could prepare his next report on compensation for victims of acts of terrorism and torture, and reintegration measures to be taken, taking into account the opinions expressed by the different regional groups.

82. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) welcomed the suggestion by the Cuban delegation, which could serve as the basis for a future report.

83. While full agreement on the concept of gender would be useful, he believed that disagreements were not necessarily a bad thing because they offered the opportunity to discuss different viewpoints. His report should not be considered an expression of personal political opinions, but rather as a document produced in accordance with the rules established in the Code of Conduct adopted by the Human Rights Council. However, the provisions of the Code of Conduct related to thematic reports were not specific enough; the reference to the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity was included in the context of the examination of legally binding human rights instruments.

84. The Code of Conduct stipulated that mandate holders were accountable to the Human Rights Council, which also had before it the report submitted to the General Assembly. Although some of the recommendations made at the end of his report concerned the Council's procedures directly, he believed it was appropriate to submit them to the General Assembly because several aspects were of interest to United Nations actors, beyond the field of human rights, including those responsible for counter-terrorism.

85. The concept of gender applied to males or females in their social context, which of course varied according to time and place. Addressing the question of gender identity or sexual orientation did not mean ignoring women's rights; it meant approaching the issue from a much broader perspective. Many violations of women's rights derived from the fact that they did not wish to be confined to the gender roles assigned to them.

86. Human rights law also dealt with discrimination based on sexual orientation, and it had been acknowledged in many United Nations documents that gender must not be static. The situation of male persons as dealt with in the report had nothing to do with sexual orientation, but was examined from the angle of the treatment of men suspected of being terrorists. Regarding the comment made by the delegation of the Holy See, he stressed that it was not a matter of defending the rights of a particular category of human beings but of defending the fundamental rights of every human person, appreciating and respecting their dignity, irrespective of their sex, gender or sexual orientation.

87. In response to the question from the delegation of the United States of America, he recalled that in his

report on his mission to Turkey, he had addressed the question of the improvement in the role of women in the framework of the implementation of counter-terrorism measures. Education, especially girls' education in south-eastern Turkey, was essential to build a society free of terrorism, in which girls could fully enjoy their economic, social and cultural rights.

88. The negative impacts of monitoring the financing of non-governmental organizations as part of the fight against terrorism, a question raised by Australia and Sweden, could be mitigated with the establishment of a body to ensure that microprojects, especially those managed by women, were not used to finance terrorism.

89. Regarding complementary measures that could be taken to avoid problems for transgender people at borders, the question of security technologies used at borders was just as important as identity documents, given the lack of sensitivity displayed during border checks.

90. In response to questions from the delegations of Sweden, Canada and Mexico concerning the promotion of women's rights in the context of the fight against terrorism, he said that he continued to carry out joint missions with the Counter-Terrorism Committee and its Executive Directorate and hoped that the reference tools of the Working Group on Protecting Human Rights while Countering Terrorism would allow for an assessment of the gender issue in the preparation of the most common counter-terrorism measures.

91. Since the question from the delegation of India was very complex, he hoped to give an answer during later contacts with the Government of India. Many of his recommendations, however, were directly linked to the protection of women's rights in the context of the fight against terrorism.

92. After his mission to the occupied Palestinian Territory in 2007, he had made a number of recommendations that must be taken into consideration, despite the fact that they represented only modest progress, recognizing that the most effective measures depended on political leaders.

93. Regarding the impact of counter-terrorism measures on female members of indigenous peoples, raised by Finland, experience had shown that indigenous groups could be caught between a repressive Government and a terrorist group, women often being victims of particular forms of violence. The general recommendation made in that regard was aimed at empowering women, listening to them and respecting their interests and aspirations.

94. Given the lack of time, he could not respond to all the questions and comments of the delegations but assured them that he appreciated their statements and would study them carefully.

The meeting rose at 1.15 p.m.